



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

AUG 19 2008

CERTIFIED MAIL NO. 7007 1490 0000 4710 1546
RETURN RECEIPT REQUESTED

IN REPLY: AIR-5
REFER TO: Docket No. R9-08-05

James A. Repman
President
California Portland Cement Company
2025 E. Financial Way
Glendora, CA 91741

Re: California Portland Cement Company Finding and Notice of Violation

Dear Mr. Repman:

Enclosed is a copy of a Notice of Violation and Finding of Violation ("NOV/FOV") issued pursuant to sections 113(a)(1), 113(a)(3) and 167 of the Clean Air Act, 42 U.S.C. §§ 7401-7671q (the "Act"), notifying you that the United States Environmental Protection Agency ("EPA"), Region IX, finds that California Portland Cement Company ("CPCC") has violated certain sections of the Act's Prevention of Significant Deterioration of Air Quality, Title V Operating Permit Program, and the National Emission Standard for Hazardous Air Pollutants, requirements at its portland cement plants located in Colton and Mojave, California (the "Facilities").

You should be aware that sections 113(a)(1), 113(a)(3) and 167 of the Act authorize EPA to issue an order requiring compliance with the requirements of the Act, issue an administrative penalty order, or commence a civil action seeking an injunction and/or a civil penalty. Furthermore, section 113(c) of the Act provides for criminal penalties in certain cases.

In addition, section 306 of the Act, 42 U.S.C. 7606, the regulations promulgated thereunder (2 C.F.R. Part 180), and Executive Order 11738 provide that facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. A violation of the Act may result in the Mojave and Colton Facilities being declared ineligible for participation in any federal contract, grant, or loan.

If you wish to discuss the enclosed NOV/FOV, you may request a conference with EPA within ten (10) working days of receipt of this NOV/FOV. The conference will afford CPCC an

opportunity to present information bearing on the finding of violation, the nature of the violations, and any efforts it may have taken or proposes to take to achieve compliance.

If you have any questions pertaining to this NOV/FOV, please contact Charles Aldred of the Air Enforcement Office at (415) 972-3986, or have your attorney contact Ivan Lieben of the Office of Regional Counsel at (415) 972-3914.

Thank you for your cooperation in this matter.

Sincerely,



Deborah Jordan
Director, Air Division

Enclosure

cc w/enc: South Coast AQMD
Kern County APCD
CARB



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

AUG 19 2008

IN REPLY: AIR-5
REFER TO: Docket No. R9-08-05

Jim Ryden
Enforcement Division Chief
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Dear Mr. Ryden:

Enclosed for your information is a copy of a Notice of Violation and Finding of Violation ("NOV/FOV") that the United States Environmental Protection Agency ("EPA"), Region IX, issued to the California Portland Cement Company ("CPCC") for violations of the Clean Air Act ("Act") at CPCC's portland cement plants in Colton and Mojave, California.

The purpose of the NOV/FOV is to notify CPCC that EPA finds that it has violated the National Emission Standard for Hazardous Air Pollutants, Prevention of Significant Deterioration, and Title V Operating Permit requirements of the Act. The violations are set forth more specifically in the enclosed NOV/FOV. The NOV/FOV has been issued pursuant to sections 113(a)(1), 113(a)(3) and 167 of the Act, 42 U.S.C. § 7401-7671q.

The Act also provides that after 30 days from the issuance of an NOV, EPA may determine if any action will be taken pursuant to Section 113 of the Act.

If you have any questions concerning this NOV/FOV, please contact Charles Aldred of the Region 9 Air Enforcement Office at (415) 972-3986, or aldred.charles@epa.gov.

Sincerely,

A handwritten signature in dark ink, appearing to read "Deborah Jordan".

Deborah Jordan
Director, Air Division

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

AUG 19 2008

IN REPLY: AIR-5
REFER TO: Docket No. R9-08-05

David Jones
Air Pollution Control Officer
Kern County Air Pollution Control District
2700 M Street, Ste. 302
Bakersfield, CA 93301

Dear Mr. Jones:

Enclosed for your information is a copy of a Notice of Violation and Finding of Violation ("NOV/FOV") that the United States Environmental Protection Agency ("EPA"), Region IX, issued to the California Portland Cement Company ("CPCC") for violations of the Clean Air Act ("Act") at CPCC's portland cement plant in Mojave, California (the "Facility").

The purpose of the NOV/FOV is to notify CPCC that EPA finds that it has violated at its Mojave Facility the Prevention of Significant Deterioration and Title V Operating Permit Program requirements of the Act. The violations are set forth more specifically in the enclosed NOV/FOV. The NOV/FOV has been issued pursuant to sections 113(a)(1), 113(a)(3) and 167 of the Act, 42 U.S.C. § 7401-7671q.

The Act also provides that after 30 days from the issuance of an NOV, EPA may determine if any action will be taken pursuant to Section 113 of the Act.

If you have any questions concerning this NOV/FOV, please contact Charles Aldred of the Region 9 Air Enforcement Office at (415) 972-3986, or aldred.charles@epa.gov.

Sincerely,

A handwritten signature in dark ink, appearing to read "Deborah Jordan", written over a horizontal line.

Deborah Jordan
Director, Air Division

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

AUG 19 2008

IN REPLY: AIR-5

REFER TO: Docket No. R9-08-05

Barry Wallerstein
Executive Officer
South Coast Air Quality Management District
21865 E. Copley Drive
Diamond Bar, CA 91765

Dear *Barry* Dr. Wallerstein:

Enclosed for your information is a copy of a Notice of Violation and Finding of Violation ("NOV/FOV") that the United States Environmental Protection Agency ("EPA"), Region IX, issued to the California Portland Cement Company ("CPCC") for violations of the Clean Air Act ("Act") at CPCC's portland cement plant in Colton, California (the "Facility").

The purpose of the NOV/FOV is to notify CPCC that EPA finds that it has violated the National Emission Standard for Hazardous Air Pollutants. The violations are set forth more specifically in the enclosed NOV/FOV. The NOV/FOV has been issued pursuant to sections 113(a)(1), 113(a)(3) and 167 of the Act, 42 U.S.C. § 7401-7671q.

If you have any questions concerning this NOV/FOV, please contact Charles Aldred of the Region 9 Air Enforcement Office at (415) 972-3986, or aldred.charles@epa.gov.

Sincerely,

Deborah Jordan
Deborah Jordan
Director, Air Division

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In the Matter of)	Docket No. R9-08-05
)	
CALIFORNIA PORTLAND CEMENT)	NOTICE OF VIOLATION
COMPANY,)	AND FINDING OF VIOLATION
Mojave and Colton, California)	
)	
Proceeding Under Section)	
113(a) of the Clean Air Act,)	
42 U.S.C. § 9613(a))	

NOTICE OF VIOLATION/FINDING OF VIOLATION

This Notice of Violation and Finding of Violation ("NOV/FOV") is issued to the California Portland Cement Company ("CPCC") for violations of the Clean Air Act ("CAA" or the "Act"), as amended, 42 U.S.C. §§ 7401-7671q, at its portland cement manufacturing facilities located in Mojave and Colton, California (the "Mojave Plant" and "Colton Plant," respectively). CPCC violated the Prevention of Significant Deterioration ("PSD") and Title V Operating Permit Program requirements at its Mojave Plant. CPCC also violated the National Emission Standards for Portland Cement Manufacturing Facilities at its Colton Plant. This NOV/FOV is issued pursuant to Sections 113(a)(1), 113(a)(3) and 167 of the Act. Section 113(a)(1) requires the Administrator of the United States Environment Protection Agency ("EPA") to notify any person in violation of an applicable state implementation plan ("SIP") or a permit when the Administrator finds that person to be in such violation. The federal PSD regulations also clarify that failure to comply with the PSD

provisions renders a source subject to enforcement under section 113 of the Act. See 40 C.F.R. § 52.23. The authority to issue this NOV/FOV has been delegated to the Regional Administrator of the United States Environment Protection Agency ("EPA") Region 9 and further re-delegated to the Director, Air Division, EPA Region 9.

SUMMARY OF VIOLATIONS

Mojave Plant

The Mojave Plant is a portland cement manufacturing plant, including a quarry, a single 4-stage preheater with inline precalciner dry rotary kiln used to produce clinker, a clinker cooler, and finish mills used to make cement. Although the Mojave Plant has operated at this location since 1953, the only kiln, Kiln 6, currently operating was initially constructed in 1980 when it replaced 5 kilns that are no longer operational. This NOV/FOV concerns a modification made to the Mojave Plant in 1998 when the capability to introduce pure oxygen into the kiln burners was added to Kiln 6 and CPCC subsequently operated the kiln with this additional oxygen injection. CPCC first constructed and began operation of the oxygen enrichment system in or about March 1998 (the "Oxygen Enrichment Project").

The Mojave Plant is located in an area that has at all relevant times been classified as attainment for nitrogen dioxide ("NO₂"), sulfur dioxide ("SO₂") and carbon Monoxide ("CO"). Accordingly, the PSD provisions of Part C, Title I of the Act

apply to operations at the Mojave Plant for oxides of nitrogen ("NO_x"),¹ SO₂ and CO emissions. EPA has determined that the Oxygen Enrichment Project was a major modification for PSD purposes since the Mojave Plant significantly increased both actual and potential emissions of NO_x, SO₂ and CO after installation and operation of Project. CPCC's failure to apply for a PSD permit or install and operate additional emissions controls meeting best available control technology ("BACT") covering these pollutants when it constructed and began operating the Oxygen Enrichment Project was a violation of the PSD requirements of the Act.

CPCC also violated the Title V Operating Permit Program requirements of the Act set forth at 42 U.S.C. §§ 7461-7661f, the federal Title V regulations set forth at 40 C.F.R. Part 70, and the approved Kern County Air Pollution Control District ("KCAPCD") Title V program set forth at Rule 201.1. KCAPCD has administered an approved Title V Operating Permit Program since November 16, 1993. CPCC's failure to identify PSD requirements in its application submitted to KCACPD for a Title V permit, supplement or correct that application to include PSD requirements, or obtain a Title V permit that contains the PSD requirements after the construction and operation of the Oxygen Enrichment Project were violations of Title V's requirements. See 42 U.S.C. §§ 7661b(a)-(b) and 7661c(a); 40 C.F.R.

¹ NO_x serves as the regulated pollutant for the NO₂ standard.

§§ 70.5(a)(c); KCAPCD Rule 201.1(IV)(B). As a result, CPCC obtained a deficient Title V permit, i.e., one that did not include all applicable requirements, and therefore is operating the Mojave Plant without a valid Title V permit in violation of 42 U.S.C. §§ 7661a, 7661b, and 7661c; 40 C.F.R. §§ 70.1, 70.5 and 70.6; KCAPCD Rule 201.1(III) and (IV)(A).

Colton Plant

The Colton Plant is a portland cement manufacturing plant, including a quarry, two long dry rotary kilns used to produce clinker, clinker coolers, and finish mills used to make cement. Although the Colton Plant has operated at its current location since the late 19th century, the current kilns were initially constructed in 1960. This NOV/FOV concerns failure to submit to EPA semi-annual excess emissions and continuous monitoring system performance reports as required by the National Emission Standards for Hazardous Air Pollutants ("NESHAP") General Provisions, 40 C.F.R. Part 63 Subpart A (the "General Provisions"), and the Portland Cement Manufacturing Industry standards, 40 C.F.R. Part 63 Subpart LLL (the "Cement Standards"). The Colton Plant, as an area source, is an affected facility subject to the requirements of the NESHAP General Provisions and Cement Standards.

STATUTORY & REGULATORY BACKGROUND

National Ambient Air Quality Standards

1. The Administrator of EPA, pursuant to authority under

Section 109 of the Act, 42 U.S.C. § 7409, has promulgated National Ambient Air Quality Standards ("NAAQS") for certain criteria pollutants relevant to this NOV/FOV, including NO₂, CO, and SO₂. 40 C.F.R. §§ 50.4, 50.5, 50.7, 50.8, 50.9, and 50.10.

2. Pursuant to Section 107(d) of the Act, 42 U.S.C. § 7407(d), the Administrator promulgated lists of attainment status designations for each air quality control region ("AQCR") in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The attainment status designations for the California AQCRs are listed at 40 C.F.R. §§ 81.305.

Prevention of Significant Deterioration

3. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA a plan that provides for the implementation, maintenance, and enforcement of primary and secondary NAAQS in the state. Upon approval by EPA, the plan becomes part of the applicable state implementation plan ("SIP") for that state.

4. Section 110(a)(2)(C) of the Act, 42 U.S.C. § 7410(a)(2)(C), requires that each SIP include a PSD permit program as provided in Part C of Title I of the Act, 42 U.S.C. §§ 7470-7491. Part C sets forth requirements for SIPs for attainment areas to ensure maintenance of the NAAQS.

5. On June 19, 1978, pursuant to Sections 160 through 169 of the Act, 42 U.S.C. §§ 7470-7479, EPA promulgated federal PSD regulations at 40 C.F.R. § 52.21 (43 Fed. Reg. 26,402).

6. The federal PSD program was incorporated into all

applicable implementation plans nation-wide and contains the applicable PSD program requirements for each plan until EPA approves into an individual SIP a replacement program. See 40 C.F.R. § 52.21(a); 42 U.S.C. § 7410(a)(2)(C).

7. EPA has never approved into the California SIP a PSD program for Kern County, thus the federal PSD requirements apply in the County.

8. Subsequent to 1978, the PSD regulations have been periodically revised. As the PSD violation identified in this NOV/FOV first commenced in 1998, the 1992 amendments to the PSD regulations contain the applicable provisions pertaining to the alleged violations identified in this NOV/FOV. See 57 Fed. Reg. 32314 (July 21, 1992).

9. 40 C.F.R. § 52.21 (b)(1)(i)(a) (1992) defined a "major stationary source" as any stationary source within one of 28 source categories which emits, or has the potential to emit, 100 tons per year or more of any air pollutant subject to regulation under the Act. Portland cement plants are included among the 28 source categories.

10. The PSD Regulations defined a "major modification" as "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act." 40 C.F.R. § 52.21(b)(2)(i) (1992).

11. 40 C.F.R. § 52.21(b)(3)(i) (1992) defined "net emissions increase" as the "amount by which the sum of the following exceeds zero:

- a. Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and
- b. Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and otherwise creditable".

12. 40 C.F.R. § 52.21(b)(21) (1992) defined "actual emissions" as follows: "In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation." The PSD regulations also provide that "[f]or any emissions unit ... which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit on that date." 40 C.F.R. § 52.21(b)(21)(IV) (1992).

13. 40 C.F.R. § 52.21(b)(4) (1992) defined "potential to emit" as the "maximum capacity of a stationary source to emit a pollutant under its physical or operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including the air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable."

14. 40 C.F.R. § 52.21(b)(23)(i) (1992) defined "significant" and states that, in reference to NO_x, SO₂ and CO,

significant net emissions increase means an emissions rate would equal or exceed 40 tons or more per year of NO_x, 40 tons or more per year of SO₂, or 100 tons or more per year of CO.

15. An applicant for a PSD Permit to modify a stationary source is required to submit all information necessary to allow the permitting authority to perform any analysis or make any determination required in order to issue the appropriate permit. 40 C.F.R. § 52.21(n) (1992).

16. 40 C.F.R. § 52.21(i) (1992) prohibited commencement of actual construction of a major modification to which the PSD requirements apply unless the source had a permit stating that the requirements of 40 C.F.R. §§ 52.21(j)-(r) had been met.

17. The PSD permitting process required, among other things, that for pollutants emitted in significant amounts, the owner or operation of a major source apply BACT to control emissions, 40 C.F.R. § 52.21(j) (1992); model air quality, 40 C.F.R. § 52.21(l) (1992); and perform a detailed impact analysis regarding both the NAAQS and allowable increments, 40 C.F.R. § 52.21(k) (1992).

18. Any owner or operator of a source or modification subject to 40 C.F.R. § 52.21 who commenced construction after the effective date of the PSD regulations without applying for and receiving a PSD permit is subject to appropriate enforcement action by EPA. 40 C.F.R. § 52.21(r)(1) (1992); Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477.

Title V Operating Permit Program

19. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including "major sources" and any source required to have a PSD permit. See Section 502(a) of the Act, 42 U.S.C. § 7661a(a). Regulations implementing the Title V permit program are set forth in 40 C.F.R. Part 70.

20. Pursuant to Title V, it is unlawful for any person to violate any requirement of a permit issued under Title V or to operate a major source except in compliance with a permit issued by a permitting authority under Title V. Section 502(a) of the Act, 42 U.S.C. § 7661a(a).

21. Under Section 502(d)(1) of the Act, states were required to develop and obtain approval to administer Title V programs. 42 U.S.C. § 7661a(d)(1). EPA granted interim approval of KCAPCD's Title V Operating Permit Program on November 16, 1993, and final full approval on November 30, 2001. See 40 C.F.R. Part 70 Appendix A.

22. Sources subject to Title V and falling under KCAPCD's jurisdiction are required to submit to KCAPCD timely and complete Title V applications that identify all "applicable requirements," including PSD requirements. See 40 C.F.R. § 70.5(a); KCAPCD Rule 201.1(IV)(C)(1)

23. Sources subject to Title V who have submitted an application are required to supplement or correct the application

to include applicable requirements that were not included in the original application. 40 C.F.R. § 70.5(b); KCAPCD Rule 201.1(IV)(C)(2).

24. Sources subject to Title V and falling under KCAPCD jurisdiction must obtain a Title V permit that: 1) contains such conditions necessary to assure compliance with the applicable requirements; 2) identifies all applicable requirements the source is subject to; and 3) certifies compliance with all applicable requirements, and where a source is not meeting requirements, contains a plan for coming into compliance. Sections 503 and 504 of the Act, 42 U.S.C. §§ 7661b and 7661c(a); 40 C.F.R. §§ 70.1, 70.5 and 70.6; KCACPD Rule 201.1(I)(A).

25. Failure of a source subject to Title V to submit a complete application, supplement that application when new requirements become applicable, or to obtain a Title V permit that contains all applicable requirements, such as PSD requirements, are violations of the Act.

National Emission Standards for Hazardous Air Pollutants

26. Pursuant to section 112 of the Act, the Administrator of the EPA promulgated the following NESHAP standards: 40 C.F.R. Part 63, Subpart A -- General Provisions (the "General Provisions"), 59 Fed. Reg. 12,430 (Mar. 16, 1994), as amended (40 C.F.R. §§ 63.1 through 63.15) -- and Subpart LLL -- National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry (the "Cement Standards"), 64 Fed.

Reg. 31925, June 14, 1999, as amended at 67 Fed. Reg. 16619, Apr. 5, 2002; 67 Fed. Reg. 72584, Dec. 6, 2002 (40 C.F.R. §§ 63.1340 through 60.1359).

27. The General Provisions applicability requirements provide, in pertinent part, that the NESHAP standards "regulate specific categories of stationary sources that emits (or have the potential to emit) one or more hazardous air pollutants listed in this part pursuant to section 112 (b) of the Act." 40 C.F.R. § 63.1.

28. The General Provisions' recordkeeping and reporting requirements provide, in pertinent part, that "the owner or operator of an affected source required to install a CMS by a relevant standard shall submit an excess emissions and continuous monitoring system performance report and/or a summary report to the Administrator semiannually." 40 C.F.R. § 63.10(e)(3).

29. The Cement Standards set forth specific emissions standards for dioxins/furans ("D/F Emissions Standards") applicable to owners or operators of an existing kiln or an existing in-line kiln/raw mill located at a facility that is an area source subject to the provisions of subpart LLL. 40 C.F.R. § 63.1343.

30. The Cement Standards require that owners or operators of an affected source subject to the D/F Emissions Standards must monitor and maintain records of the temperature of the exhaust gases from the kiln, in-line kiln/raw mill and alkali bypass, if

applicable, at the inlet to, or upstream of, the kiln, in-line kiln/raw mill and/or alkali bypass PM control devices. 40 C.F.R. § 63.1350(f).

31. The reporting requirements of the Cement Standards require that an affected source semiannually submit a summary report to EPA containing the information specified in Section 63.10(e)(3)(vi) of the General Provisions along with additional information specific to Subpart LLL including "[a]ll exceedences of maximum control device inlet gas temperature limits specified in § 63.1344(a) and (b)." 40 C.F.R. § 63.1354(b)(9).

32. The date for existing sources to come into compliance with the Cement Standards was June 14, 2002. 40 C.F.R. § 63.1351(a).

FINDINGS OF FACT

MOJAVE PLANT

33. Kern County, the location of the Mojave Plant, was designated as attainment/unclassifiable at all times for NO₂, CO, and SO₂ by operation of law under Sections 107(d)(1)(C) and 186(a) of the Act, 42 U.S.C. §§ 7407(d)(1)(C) and 7486(a). See 56 Fed. Reg. 56694 (Nov. 6, 1991).

34. The Mojave Plant is a portland cement manufacturing facility, which is located at 9350 Oak Creek Road, Mojave, Kern County, California.

35. CPCC is the owner and operator of the Mojave Plant.

36. The Mojave Plant includes one kiln, Kiln 6, and

associated equipment used to produce clinker.

37. The combustion of coal, petroleum coke, tires, natural gas and fuel oil at Kiln 6 produces emissions of NO_x , SO_2 and CO which are released to the atmosphere.

38. Commencing around March 1998, CPCC performed physical and/or operational changes to Kiln 6 by upgrading it to allow additional oxygen injection and then subsequently operated the kiln with this additional oxygen injection (the "Oxygen Enrichment Project").

39. The purpose of the Oxygen Enrichment Project was to increase production capacity of the kiln.

40. Completion of the Oxygen Enrichment Project allowed CPCC to increase its average daily clinker production at the Mojave Plant from around 3,840 tons per day ("tpd") to 4,180 tpd.

41. CPCC conducts annual performance tests at the Mojave Plant to measure the mass of pollutants in pounds per ton of clinker it emits to the atmosphere.

42. Since January 2001, CPCC has also operated a continuous emissions monitoring system ("CEMS") at the Mojave Plant to monitor emissions of NO_x , SO_2 and CO.

43. CPCC records the number of hours that Kiln 6 operates each day at the Mojave Plant.

44. Prior to installation and operation of the CEMS system, CPCC calculated annual pollutant emissions from the Mojave Plant by multiplying the hourly emissions value [lbs of pollutants per

hour] measured during the performance test from the prior year by the number of hours that Kiln 6 operated on an annual basis.

45. After January 2001, CPCC used the raw data collected by its CEMS to calculate annual mass emissions at the Mojave Plant from Kiln 6.

Prevention of Significant Deterioration

46. March 1996 through February 1998 are the 24 months just prior to commencement of construction of the Oxygen Enrichment Project, and therefore should be considered the baseline period for PSD purposes (the "PSD Baseline").

47. The average annual emissions for Kiln 6 during the PSD Baseline were:

	NO _x	SO ₂	CO
Average Annual Baseline Emissions (tpy)	2,354.00	562.00	473.00

48. KCAPCD, the local agency administering the SIP in Kern County, issued a federally enforceable Authority to Construct ("ATC") to CPCC on November 10, 1998 for, "Modification of Pyroprocessing System: Addition of Oxygen System and Increase Production Rate."

49. The ATC issued by KCAPCD included, among other conditions, the following annual emissions limits for NO_x, SO₂, and CO emissions from Kiln 6:

	NO _x	SO ₂	CO
Emissions limit (tpy)	3,744.90	2,698.08	803.73

50. As the annual limits in the ATC for the Mojave Plant

are federally enforceable, they constitute the Kiln 6 Potential to Emit ("PTE").

51. The difference between the PTE and the PSD Baseline Emissions for Kiln 6 at the Mojave Plant are:

	NO _x	SO ₂	CO
Actual-to-Potential Emissions Increase (tpy)	1,390.90	2,136.08	330.73

52. The net emissions increases for NO_x, SO₂ and CO listed above constitute a significant net emissions increase for PSD purposes since the increases were above the 40 tpy PSD thresholds for NO_x and SO₂ and the 100 tpy PSD threshold for CO.

53. The construction of the Oxygen Enrichment Project was a "major modification" to the Mojave Plant, as defined by 40 C.F.R. § 52.21 (b) (2) (i).

54. CPCC did not apply for a PSD Permit for the Oxygen Enrichment Project.

55. CPCC failed to install and operate BACT-level emission controls for NO_x, SO₂ or CO emissions at Kiln 6 either at the time of the Oxygen Enrichment Project or any time since the completion and operation of the Oxygen Enrichment Project.

Title V Operating Permit Program

56. As alleged in Paragraphs 46-55, CPCC commenced a major modification at its Mojave Plant in 1998, and the modification triggered the requirements to obtain a PSD permit, undergo a PSD

BACT analysis and operate in compliance with the PSD permit. CPCC failed to satisfy these requirements.

57. CPCC first submitted a title V application to KCAPCD on December 1, 1995. The final permit was issued by KCAPCD in late 1998.

58. Prior to issuance of the Title V permit, CPCC failed to supplement and/or correct its Title V permit application to identify all applicable requirements, including PSD requirements for NO_x, SO₂ and CO, a plan to come into compliance with those PSD requirements, and an updated certification of compliance that included the PSD requirements.

59. As a result of CPCC's failure to provide complete information in its application or to supplement and/or correct its application to include PSD requirements, CPCC obtained a deficient Title V operating permit that did not contain all applicable requirements.

60. Pursuant to Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), it is unlawful for any person to operate a source required to have a PSD permit except in compliance with a permit issued by a permitting authority under Title V. Similarly, 40 C.F.R. §§ 70.1(b), 70.6(a) and KCAPCD Rule 201.1(I)(A) require sources subject to Title V to have an operating permit that assures compliance with all applicable requirements.

61. CPCC has operated and continues to operate the Mojave Plant without a valid Title V operating permit in violation of

Sections 502, 503 and 504 of the Act, 42 U.S.C. §§ 7661a, 7661b, and 7661c; 40 C.F.R. §§ 70.1, 70.5 and 70.6; and KCAPCD Rule 201.1.

COLTON PLANT

62. CPCC is the owner and operator of the Colton Plant.

63. The Colton Plant is a portland cement manufacturing facility, which is located at 695 South Rancho Avenue, Colton, San Bernadino, California.

64. The Colton Plant includes two kilns, Kilns #1 and #2, and associated equipment used to produce clinker.

NESHAP General Provisions and Cement Standards

65. The Colton Plant is an existing area source of hazardous air pollutants under the Cement Standards and therefore is an affected Source that is subject to the NESHAP General Provisions and the D/F Emissions Standards of the Cement Standards.

66. Under both the NESHAP General Provisions and the Cement Standards, the Colton Plant is required to submit to EPA a semi-annual excess emissions and continuous monitoring system performance and summary report.

67. Since June 14, 2002, the effective date of the Cement Standards, CPCC has failed to submit to EPA semi-annual excess emissions and continuous monitoring system performance reports for its Colton Plant.

NOTICE OF VIOLATION

Prevention of Significant Deterioration

68. Pursuant to Section 113(a)(1) of the Act, notice is hereby given to CPCC that the Administrator of the EPA, by authority duly delegated to the undersigned, finds that CPCC is in violation of federal PSD requirements at its Mojave Plant as described in this NOV/FOV. EPA reserves the right to amend this NOV/FOV or issue a new NOV/FOV based on additional information obtained through Section 114 of the Act or any other source available to the Administrator at any point.

FINDING OF VIOLATION

Title V Operating Permit Program

69. Notice is also given to CPCC that it failed supplement or correct its Title V application submitted to KCAPCD to include PSD requirements or obtain a Title V permit that contained PSD requirements, and therefore is in violation of Title V of the Act.

NESHAP General Provisions and Cement Standards

70. Notice is also given to CPCC that it failed to submit semi-annual excess emissions and continuous monitoring system performance reports for the Colton Plant as required by the NESHAP General Provisions and the Cement Standards, and therefore is in violation of Section 112 of the Act.

ENFORCEMENT

71. For any violation of a SIP, such as for PSD violations, Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the

date of the issuance of a notice of violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the SIP, issue an administrative penalty order, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation that occurs on or before January 30, 1997, not more than \$27,500 per day for each violation that occurs after January 30, 1997, and not more than \$32,500 per day for each violation that occurs after March 14, 2004. 42 U.S.C. § 7413(a)(1); Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended; 40 C.F.R. Part 19.

72. Sections 113(a)(3) and 167 of the Act, 42 U.S.C. §§ 7413(a)(3) and 7477, provide additional authority for EPA to enforce against violators of the Act.

73. Section 113(c) of the Act, 42 U.S.C. § 7413(c), provides for criminal penalties, imprisonment, or both for persons who knowingly violate any federal regulation or permit requirement. For violations of the SIP, a criminal action can be brought 30 days after the date of issuance of a Notice of Violation.

74. Section 306 of the Act, 42 U.S.C. § 7606, the regulations promulgated thereunder (2 C.F.R. Part 180), and Executive Order 11738 provide that facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. A violation of the Act may result in the Mojave and/or Colton

Plants being declared ineligible for participation in any federal contract, grant, or loan.

PENALTY ASSESSMENT CRITERIA

75. Section 113(e)(1) of the Act, 42 U.S.C. § 9613(e)(1), states that the Administrator or the court shall determine the amount of a penalty to be assessed by taking into consideration such factors as justice may require, including the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violation.

76. Section 113(e)(2) of the Act, 42 U.S.C. § 9613(e)(2), allows the Administrator or the court to assess a penalty for each day of violation. This section further provides that for purposes of determining the number of days of violation, where the EPA makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of an NOV, the days of violation shall be presumed to include the date of the NOV and each and every day thereafter until the facility establishes that continuous compliance has been achieved, except to the extent that the facility can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

OPPORTUNITY FOR CONFERENCE

77. CPCC may confer with EPA regarding this NOV/FOV if it so requests. A conference would enable CPCC to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. If CPCC seeks such a conference, it may choose to be represented by counsel. If CPCC wishes to confer with EPA, it must make a request for a conference within 10 working days of receipt of this NOV/FOV. Any request for a conference or other inquiries concerning the NOV/FOV should be made in writing to:

Ivan Lieben Office of Regional Counsel
U.S. EPA (ORC-2)
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3914

Dated: 8-18-08



Deborah Jordan
Director, Air Division